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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,737

03/16/2004

Lawrence J. Koncelik JR.

1840

7590

10/30/2007

Mr. Walter J. Tencza Jr.
Suite 3
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EXAMINER

BANTA, TRAVIS R

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

10/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/801,737	Applicant(s) KONCELIK, LAWRENCE J.	
	Examiner Travis R. Banta	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 3/16/2004 has not been considered. 37 C.F.R. 1.98 requires a column for examiner initials, as well as a heading identifying the document as an information disclosure statement. The presented statement on many documents does not have a place for examiner initials (these are just copies of an IDS initialed by another examiner, the instant examiner can not initial over the other examiner's initials.) Additionally, a notice of references cited is just that. It is therefore, not declared as an information disclosure statement. Clean un-initialed statements that follow the format specified by 37 C.F.R. 1.98 will be considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hine et al. (US 5,877,444).

Regarding claim 1, Hine et al. discloses a memory (column 1 lines 23-24), a processor (column 1 line 23), and a receiver as a microphone (column 1 line 14-15). Claim 1 is an apparatus claim. The remainder of the claim is non-descriptive functional language. Therefore, the structure cited must be capable of receiving test golfer sound waves from a golfer swinging a club. The

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processor must also be capable of recording characteristics in memory. Hine et al. discloses receiving sound waves using a microphone, processor and even using an oscilloscope. Sound waves are inherent to a golfer swinging a club. Processors must also inherently possess memory to perform calculations.

Regarding claims 2-8, Hine et al. discloses a monitor (column 2 line 53). The processor is capable of causing the monitor to display characteristics of test sound waves (column 2 line 53-57). Frequency is an amplitude (as the word is used here) of a sound wave measured with respect to time. The apparatus described in Hine et al. records the amplitude and frequency for comparison with known ideal values (see column 2 lines 5-57). Frequency is measured with respect to time. Hine et al. discloses a graph of a square wave signal (see column 2 line 45). The graph is derived from a known ideal; the discrepancy between ideal and actual is measured (see column 2 line 53-57).

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by McLaughlin. (US 3,776,556).

Regarding claim 11, McLaughlin teaches a method comprising receiving data from test golfer sound waves (see column 3 lines 14-26). The sound waves are generated by the sound of a golf club being swung by a test golfer. The golfer then records the characteristics of the sound wave in memory until it can be corrected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hine et al (above) in view of Backus (US 4,576,378). This rejection contemplates the recent decision made by the Supreme Court in KSR v. Teleflex - 2007-04-30.

Regarding claims 9 and 10, Hine et al. discloses a sound measuring device, as described above, but fails to disclose a golf club with a sound element, and more specifically a golf club with an airfoil. Backus discloses golf club with an airfoil (see figure 1). One of ordinary skill in the art would recognize that the sound made by the golf club when swung in an ideal manner would have a distinctive sound that could be measured and analyzed for swing correction. It would therefore be obvious to one of ordinary skill in the art to use known sound analysis techniques and equipment as disclosed by Hine et al. to measure the distinctive sound of an ideal golf club swing on a club modified with an airfoil as disclosed by Backus.

Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hine et al (above) in view of McLaughlin. (US 3,776,556). This rejection contemplates the recent decision made by the Supreme Court in KSR v. Teleflex - 2007-04-30.

Regarding claim 11, Hine et al discloses a sound measuring device as described above. Hine et al. fails to disclose using the apparatus to receive data concerning test golfer sound waves generated by the sound of a club being swung. Hine et al. does disclose recording received sound characteristics in memory (see column 1 lines 23-24). McLaughlin discloses a golf club emitting sound waves. One of ordinary skill in the art would recognize that the sound made by the golf club when swung in an ideal manner would have a distinctive sound that could be measured and analyzed for swing correction. It would therefore be obvious to one of ordinary

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skill in the art to use known sound analysis techniques and equipment as disclosed by Hine et al. to measure the distinctive sound of an ideal golf club swing on a club modified with a whistle as disclosed by McLaughlin. It is obvious to use computers to collect and measure sound data from a golf club swing.

Regarding claims 12-18, Hine et al. discloses a monitor (column 2 line 53). The processor is capable of causing the monitor to display characteristics of test sound waves (column 2 line 53-57). Frequency is an amplitude (as the word is used here) of a sound wave measured with respect to time. The apparatus described in Hine et al. records the amplitude and frequency for comparison with known ideal values (see column 2 lines 5-57). Frequency is measured with respect to time. Hine et al. discloses a graph of a square wave signal (see column 2 line 45). The graph is derived from a known ideal; the discrepancy between ideal and actual is measured (see column 2 line 53-57).

Regarding claims 19 and 20, Hine et al. discloses a sound measuring device, as described above, but fails to disclose a golf club with a sound element, and more specifically a golf club with an airfoil. McLaughlin discloses golf club with an airfoil (see figure 1). An airfoil and a whistle are equivalent structures. One of ordinary skill in the art would recognize that the sound made by the golf club when swung in an ideal manner would have a distinctive sound that could be measured and analyzed for swing correction. It would therefore be obvious to one of ordinary skill in the art to use known sound analysis techniques and equipment as disclosed by Hine et al. to measure the distinctive sound of an ideal golf club swing on a club modified with an airfoil as disclosed by McLaughlin.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,638,300 – Golf Swing Analysis System

US 1,519,052 – Indicator for Golf Clubs

US 5,571,048 – Golf Swing Practice Device

US 5,273,278 – Sports Implement with Audio Feedback

US 5,174,577 – Audible/Tactile Feedback swing training device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis R. Banta whose telephone number is (571) 272-1615. The examiner can normally be reached on Monday-Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TB



ROBERT E. PEZZUTO
SUPERVISORY PRIMARY EXAMINER